

United States Court of Appeals
for the
District of Columbia Circuit



TRANSCRIPT OF
RECORD

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Court of Appeals, District of Columbia

JANUARY TERM, 1909.

No. 1981.

622

No. 7, SPECIAL CALENDAR.

THE UNITED STATES OF AMERICA ON THE RELATION
OF WILLIAM GRIBBLE AND MENASHA WOODEN
WARE COMPANY, APPELLANTS,

vs.

JAMES RUDOLPH GARFIELD, SECRETARY OF THE
INTERIOR.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED JANUARY 18, 1909.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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INDEX.

	Original.	Print.
Caption.....	<i>a</i>	1
Petition for mandamus.....	1	1
Rule to show cause.....	9	5
Marshal's return.....	9	6
Answer.....	10	6
Demurrer.....	17	10
Opinion.....	18	10
Order overruling demurrer.....	21	12
Order for judgment; judgment.....	22	12
Appeal.....	23	13
Memorandum: One hundred dollars deposited in lieu of appeal bond.....	23	13
Clerk's certificate.....	24	13

In the Court of Appeals of the District of Columbia.

No. 1981.

THE UNITED STATES OF AMERICA on the Relation of WILLIAM GRIBBLE and MENASHA WOODEN WARE COMPANY, Appellants,

vs.

JAMES RUDOLPH GARFIELD, Secretary of the Interior.

a Supreme Court of the District of Columbia.

At Law. No. 50796.

THE UNITED STATES OF AMERICA on the Relation of WILLIAM GRIBBLE and MENASHA WOODEN WARE COMPANY, Petitioners,

vs.

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Petition for Mandamus.*

Filed July 23, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50796.

THE UNITED STATES OF AMERICA on the Relation of WILLIAM GRIBBLE and MENASHA WOODEN WARE COMPANY, Petitioners,

vs.

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

To the Supreme Court of the District of Columbia:

Your petitioners, William Gribble and Menasha Wooden Ware Company, respectfully represent:

1. That your petitioner, William Gribble, is a citizen of the United States and a resident of the City of Spokane, in the State of Wash-

ington; and that your petitioner, Menasha Wooden Ware Company, is a corporation duly organized under the laws of the State of Wisconsin, with its chief office in the City of Menasha, State of Wisconsin, and that the President of said Company, who resides in Menasha, Wisconsin, is C. R. Smith.

2. That the respondent, James Rudolph Garfield, is a citizen of the United States, temporarily residing in the District of Columbia, and is the Secretary of the Interior of the United States, duly qualified and acting as such, and has been such Secretary, and acting as such since March 5, 1907.

2. 3. That your petitioner, William Gribble, in the month of March, 1901, and prior thereto, had all the qualifications required by the laws of the United States to entitle him to make an entry of one hundred and sixty acres of the public lands of the United States under the Act of Congress entitled: "An Act for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory," approved June 3, 1879 (20 Stat., 89). That having such qualifications, your petitioner, William Gribble, did on the 25th day of March, 1901, file with the local land officers in their office at Cœur d'Alene, Idaho, his timber land sworn statement (Timber and Stone Application 518) for the north half of the southeast quarter and the northeast quarter of the southwest quarter of section three, in township fifty-six north of range five west of Boise Meridian, in the State of Idaho, a part of the public domain of the United States, and containing one hundred and twenty acres of land. That said land had, prior to the making of said sworn statement by your petitioner, William Gribble, been surveyed, the corners marked, and a plat including the same prepared and filed in the General Land Office, and a copy thereof filed in the local land office at Cœur d'Alene, Idaho; and said land was not included within a military, Indian or other reservation of the United States, and was valuable chiefly for timber, but unfit for cultivation. It was subject to entry under the Act of Congress aforesaid. That your petitioner published the required notice under the statute

3 and the regulations provided by the Secretary of the Interior, made the required proof and paid for the said land \$2.50 per acre, amounting in all to the sum of \$300.00 besides the required fees, at the local land office aforesaid on the tenth day of June, 1901, and cash certificate No. 620 was issued to your petitioner therefor on the same day.

4. That, subsequent to the issuance of the aforesaid cash certificate No. 620 to your petitioner Gribble, your petitioner, Menasha Wooden Ware Company, purchased the land covered by said final entry from the said William Gribble in good faith and for a valuable consideration and is still the owner thereof.

5. That the proof and papers pertaining to said Cash Entry No. 620 were forwarded by the said local officers to the Commissioner of the General Land Office, and that on the 29th day of December, 1903, the Commissioner of the General Land Office suspended said entry pending action in accordance with circular instructions to

Registers and Receivers of local land offices dated August 18, 1899 (29 Land Decisions, 141), which instructions contemplate that notice of such action, and of the purport of charges contained in any report made against such an entry by a special agent of the General Land Office, shall be given the claimant and that he be allowed a specified time in which to apply for a hearing. Your petitioner, Menasha Wooden Ware Company, as transferee of William Gribble, petitioned the Commissioner of the General Land Office for confirmation of said Cash Entry No. 620, under the terms of the proviso to Section 7 of the Act of March 3, 1891 (26 Stat., 1095-1098-9), which petition was denied by the Commissioner of the General Land Office on the 13th day of April, 1906. Thereupon your petitioner, Menasha Wooden Ware Company, appealed to the Secretary of the Interior, who, on the 6th day of November, 1906, sustained the aforesaid decision of the Commissioner. That on the 8th day of October, 1907, your petitioner, Menasha Wooden Ware Company, filed with the Secretary of the Interior a Motion for Review of his said decision of the 6th of November, 1906, which said Motion for Review was denied by the Secretary of the Interior by a decision rendered by him on the 6th day of June, 1908.

6. That on the 20th day of July, 1901, the local land officers at all of the land offices in the State of Idaho were directed by the Commissioner of the General Land Office, under authority from the Secretary of the Interior, to cross-examine all applicants, and their witnesses, for entries of public lands, before issuing final receipt on any proof offered. November 20, 1901, the Commissioner of the General Land Office sent a list of twelve Cœur d'Alene final entries to a special agent for investigation, but the entry of your petitioner Gribble was *not* one of that number. November 5, 1902, the Commissioner of the General Land Office sent another list of twelve timber and stone cash entries to a special agent, the entry of your petitioner Gribble being one of the number, and in his said letter the Commissioner of the General Land Office said to 5 the special agent that—"There are no charges against any of these entries," &c. May 29, 1903, the Commissioner of the General Land Office sent a list of seventeen entries to a special agent, the entry of your petitioner Gribble being one of the number. However, the Commissioner's said letter of transmittal contained no charges against any of said entries, but simply advised the special agent that, under departmental order of January 23, 1903, none of said entries could go to patent until the claimants and witnesses should be cross-examined. November 2, 1903, Special Agent Schwartz, of the General Land Office, reporting upon the Gribble entry, said—"While I have been unable to procure affirmative proof of fraud I believe that all the circumstances point to fraud," &c. This report by Special Agent Schwartz was not received in the General Land Office until November 7, 1903.

7. Your petitioner, William Gribble, further represents that in making his entry as aforesaid he practiced no fraud on the respond-

ent, or any of his subordinates, or on any person whomsoever, but that the tract books at the said local land office at Cœur d'Alene showed the land entered by him as aforesaid to be surveyed and open to entry, and that the said entry as made was allowed by said local officers; that said land had been surveyed at the time your petitioner's said entry was made as hereinbefore set forth; that the official plat of survey of said Section three had been filed in the local land office under instructions from the Commissioner of the

General Land Office. And your petitioner, Menasha Wooden
6 Ware Company, further represents that it purchased the land

covered by the cash entry of the said William Gribble after
said entry had been allowed by the local land officers at Cœur
d'Alene, Idaho, as above stated, and paid therefor a valuable
consideration, and that said company practiced no fraud on the respondent, or on any of his subordinates, or any other person whomsoever.

8. Your petitioners further represent that should said entry be cancelled the said land embraced therein will become a part of the public lands of the United States and be open to entry by any qualified person; and that no rights or claims of any other person whomsoever have attached to said land, or any part thereof, in any way.

9. Your petitioners further represent that the aforesaid Cœur d'Alene, Idaho, Cash Entry No. 620, in the name of William Gribble, should be patented under the language of the proviso to Section 7 of the Act of March 3, 1891, aforesaid, which is as follows, namely,

"That after the lapse of two years from the date of the Receiver's receipt upon the final entry of any tract of land under the homestead, timber culture, desert land or pre-emption laws, or under this act, and when there shall be no pending contest or protest against the validity of said entry, the entryman shall be entitled to a patent."

10. Your petitioners further represent that the acts of the respondent, the Secretary of the Interior, in suspending the aforesaid entry and in withholding the issuance of patent thereon, are arbitrary and without authority of law; that said entry should, under the facts

recited herein, be patented; that by reason of the terms of
7 the proviso to Section 7 of the Act of March 3, 1891, herein-

before recited, the jurisdiction of the respondent to do anything except patent said entry is terminated, and that no executive department of the government has any further jurisdiction over the land covered by said entry except to patent it to your petitioner, William Gribble, and that the respondent has no power under the law to further suspend the issuance of said patent, or to cancel said entry.

Wherefore, as the respondent, James Rudolph Garfield, the Secretary of the Interior, has refused and still refuses to release said entry from suspension and to cause it to be patented under the law recited, your petitioners are deprived of the means of showing that title to said lands has, by the laws of the United States, become vested in them, and they are injured thereby, and as the laws provide no other adequate remedy in the premises whereby the petitioner,

William Gribble, can secure said patent, to which he is entitled and whereof he is deprived as aforesaid, your petitioners pray:

1. That a writ of mandamus be issued and directed to the respondent, James Rudolph Garfield, Secretary of the Interior, commanding him to release the aforesaid Cœur d'Alene Cash Entry No. 620 from suspension, and to patent the same, and to deliver said patent when issued, or cause the same to be delivered, to your petitioner William Gribble or to your petitioner Menasha Wooden Ware Company.

2. For such other and further relief as the nature of your petitioners' case may require and to the court may seem meet and proper.

WILLIAM GRIBBLE,
MENASHA WOODEN WARE COMPANY,
By JNO. M. RANKIN,
Petitioners' Attorney.

DISTRICT OF COLUMBIA, ss:

I, John M. Rankin, being first duly sworn, make oath that I am the attorney for William Gribble and for Menasha Wooden Ware Company, the above named petitioners, and that I am authorized by said petitioners to institute these proceedings; that the said William Gribble is a resident of the City of Spokane, State of Washington, and that the said Menasha Wooden Ware Company is a resident of the City of Menasha, State of Wisconsin, and that both of said petitioners are now absent from the District of Columbia; that the facts and things stated in said petition are true.

JNO. M. RANKIN.

Subscribed and sworn to before me this 23rd day of July, A. D.
1908.

By J. R. YOUNG, *Clerk*,
By FRED C. O'CONNELL,
Ass't Clerk.

9 *Rule to Show Cause.*

Filed July 23, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50796.

THE UNITED STATES OF AMERICA on the Relation of WILLIAM GRIBBLE and MENASHA WOODEN WARE COMPANY, Petitioners,
vs.

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

Upon consideration of the petition for mandamus in the above entitled case, it is ordered on this 23d day of July, 1908, that the Respondent herein show cause on the 23d day of October, 1908, at

10 o'clock a. m., before this court sitting in Circuit Court No. One, why a writ of mandamus should not issue as prayed in said petition, the date of hearing to be determined by the Court on said return day; provided, that a copy of this order and of said petition be served upon said Respondent on or before the 15th day of August, 1908.

THOS. H. ANDERSON, *Justice.*

Marshal's Return.

Served copy of within Rule and copy of the petition in this cause on Frank Pierce, Acting Secretary of the Interior July 23, 1908.

AULICK PALMER, *Marshal,*
S.

10

Answer.

Filed October 14, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50796.

UNITED STATES *ex Rel.* WILLIAM GRIBBLE and MENASHA WOODEN
WARE Co.

vs.

JAMES RUDOLPH GARFIELD, Secretary of the Interior.

The respondent, James Rudolph Garfield, specially reserving unto himself any exception to the defects to the petition filed herein and for the lack of jurisdiction of this court over him to grant a writ of mandamus to compel him to perform duties involving the exercise of judgment and discretion such as the act sought to have him compelled to perform herein, nevertheless for answer unto the said rule and the petition, says:

1. Answering the allegations of paragraph I of the petition, respondent neither admits nor denies that relator, William Gribble, is qualified to enter public lands of the United States under the timber and stone act, but admits that he made entry under said act for a tract of land described in his petition, which has not yet been finally considered by the land department;

2. Answering the allegations of paragraph II, respondent admits that he is now and has been Secretary of the Interior since March 4, 1907;

11 3. Answering the allegations of paragraph III, respondent admits that petitioner did on the twenty-fifth day of March, 1901, file with the local land officers at the district land office at Cœur d'Alene, Idaho, an application to make purchase under the act of June 3, 1878, (not June 3, 1879, as erroneously described in the petition), for the N. 1/2 of S. E. 1/4 and the N. E. 1/4 of S. W. 1/4 of Sec. 3, T. 56 N., R. 5 W., which tract had been

previously surveyed and the plat thereof filed in the district land office; that said land was not included within an Indian, military, or other reservation, but whether the tract was chiefly valuable for timber and unfit for cultivation and otherwise subject to the act of June 3, 1878, had not been finally passed upon by the land department. Respondent also admits that petitioner made publication under his application and submitted proof thereunder which was acceptable to the local land officers; that he made payment for the land as required by law, and that upon June 10, 1901, the local land officers issued him a cash certificate on account of his purchase thus made of said land. The sufficiency of relator's proof has not been passed upon by the land department further than as above stated nor has any final action been taken with respect to his said entry for the reasons as will hereinafter appear.

4. Answering the allegations of paragraph IV of the petition, respondent neither admits nor denies that subsequently to the issuance of the certificate of purchase the relator, the Menasha Wooden Ware Company, purchased the land covered by this entry in good faith and for a valuable consideration and is still the owner thereof, but alleges that the facts with respect to the connection of said company with the purchase of this land may be developed in contemplated proceedings which it is the purpose of this petition to forestall.

5. Answering the allegations of paragraph V of the petition, respondent admits that the proof submitted by relator, William Gribble, and other papers pertaining to his entry, were forwarded to the Commissioner of the General Land Office in the usual course of business and that relator, the Menasha Wooden Ware Company, as transferee of William Gribble, petitioned the Commissioner of the General Land Office for confirmation of the entry made on June 10, 1901, as before stated, under the terms of the proviso to section seven of the act of March 3, 1891 (26 Stat., 1095, 1098-9); that said petition was denied by the Commissioner of the General Land Office on the thirteenth day of April, 1906, and, upon appeal, by the Secretary of the Interior on the sixth day of November, 1906; that on the eighth day of October, 1907, the Menasha Wooden Ware Company filed with the Secretary of the Interior a motion for review of his decision of the sixth of November, 1906, which said motion was denied by the Secretary of the Interior by his decision rendered June 6, 1908, but respondent specifically denies that the entry by William Gribble was not suspended until the twenty-ninth day of December, 1903, as would seem to be the effect of the allegation of this paragraph of the petition, the facts with respect to said suspension being hereafter more fully set out in this return.

6. Answering the allegations of paragraph VI of the petition, respondent admits that on the twentieth day of July, 1901, the local land officers in all the land offices in the State of Idaho were directed to cross-examine all applicants and their witnesses in timber and stone entries before issuing final receipt on any proof offered; that

on November 20, 1901, the Commissioner of the General Land Office sent a list of 12 timber land purchases, made within the Cœur d'Alene land district, to a special agent for investigation, and that the entry by relator, William Gribble, was not included in said list; that on November 5, 1902, the Commsisioner of the General Land Office sent another list of timber and stone purchases made within said land district, to a special agent for investigation, the entry of the relator, William Gribble, being one of the number so listed; and that in the letter of instructions to said agent it was said:

There are no charges against any of these entries, but as the testifying witnesses are the same in several instances there is a suspicion of fraud about them which appears to require investigation by a special agent. If you find that there is not sufficient evidence to be had on which to base a charge of fraud which can be sustained at a hearing, you will write a separate letter in each case and recommend that the entry be relieved from suspension.

(A full copy of the letter to the special agent is attached hereto marked Exhibit "A" and is prayed to be read and considered as a part hereof as though specifically set out in full.) That on

14 May 29, 1903, the Commissioner of the General Land Office sent a list of 17 timber and stone purchases made in said land district to a special agent which list included the entry by relator, William Gribble, and with respect to said entries it was said that they could not go to patent until claimants and witnesses had been cross-examined, and the agent was directed to proceed with such examination and make separate report in each case. (A full and complete copy of this letter is thereto attached marked Exhibit "B" and prayed to be read as a part hereof.) That on November 2, 1903, a special agent made report upon the entry by relator, William Gribble, which was received at the General Land Office November 7, 1903, and a copy of said report is attached hereto marked Exhibit "C" and prayed to be read as part hereof.

7. Answering the allegations of paragraph VII of the petition, respondent states that he is not in a position to either admit or deny the same, for the reasons as stated in answer to paragraph IV of this petition.

8. Answering the allegations of paragraph VIII of the petition, respondent admits that should relator's entry be canceled the land embraced therein would become a part of the public lands open to general disposition to qualified persons, but neither admits nor denies that any rights or claims of any other person have attached to said land or any part thereof.

9. Answering the allegations of paragraph IX of the petition, respondent states that he is advised that the matters therein presented are matters of law and not of fact, but as far as advised denies that the entry by relator, William Gribble, should be patented under the proviso of section seven of the act of March 3, 1891, therein set out.

10. Answering the allegations of paragraph X, respondent denies that his action in suspending the aforesaid entry by the relator,

William Gribble, and in refusing to issue patent thereon, was arbitrary and without authority of law, and that he has lost jurisdiction over said entry and the tract therein described except to patent the same, but alleges that the action taken with respect to this entry on November 5, 1902, in listing the same for investigation by a special agent was a suspension of the entry which suspension was continued by the letter or order of May 29, 1903, to the special agent; that said actions were both taken within two years from the issue of the final certificate and prevented the running of the statute, if, indeed, a timber and stone entry is within the contemplation of section seven of the act of March 3, 1891. Further, that while the Department has heretofore held that a timber and stone purchase was within the contemplation of said act, yet, upon mature and careful consideration, this Department has determined that said holding was in error and that as both holdings were subsequent to the purchase and entry here in question the relator was in nowise prejudiced by the change in ruling.

16 Respondent further advises the court that since the investigation ordered and the report of the special agent upon this entry, the officers of the land department have been unable to locate the relator, William Gribble, to make service upon him of the charges to be preferred against his entry, to the end that opportunity might be afforded him to apply for a hearing to develop the exact state of facts respecting his purchase and alleged sale of this land to relator, the Menasha Wooden Ware Company.

Finally, respondent suggests that this proceeding is virtually and in effect an attempt to invest this court with appellate jurisdiction to try anew or review the solemn decision of the land department upon questions committed by law to its exclusive control, and that the allegations of this petition are not sufficient to show that such control has been lost, and that the petition must be denied. In order to more fully inform the court respecting the several actions taken, the decisions of the Commissioner of the General Land Office and of the Secretary of the Interior had respecting this entry, are hereto attached marked Exhibits "D," "E," and "F" and made a part hereof, and now having fully answered every material allegation in the petition respondent prays to be discharged hence without a day.

JAMES RUDOLPH GARFIELD,
Secretary of the Interior.

G. W. WOODRUFF,
Assistant Attorney-General,

DANIEL W. BAKER,
U. S. District Attorney,
Attorneys for Defendant.

F. W. CLEMENTS,
Ass't Att'y, Interior Dept., of Counsel.

17 DISTRICT OF COLUMBIA, ss:

James Rudolph Garfield being first duly sworn upon oath deposes and says, that he is Secretary of the Interior and defendant in the

above entitled cause, that he has read the foregoing answer and knows the contents thereof, and that the matters and things stated therein are true as he verily believes.

JAMES RUDOLPH GARFIELD.

Subscribed and sworn to before me this fifth day of October, A. D., 1908.

[SEAL.]

W. BERTRAND ACKER,
Notary Public in and for D. C.

Demurrer.

Filed October 24, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50796.

THE UNITED STATES OF AMERICA on the Relation of WILLIAM GRIBBLE and MENASHA WOODEN WARE COMPANY, Petitioners,
vs.

JAMES RUDOLPH GARFIELD, Secertary of the Interior, Respondent.

Now come the Relators, by their attorney, and say that the
18 return of the Respondent herein is bad in law.

JNO. M. RANKIN,
Attorney for Relators.

NOTE.—One of the points of law to be argued upon this demurrer is—

Is the Timber and Stone Cash Entry involved herein (made under the act of June 3, 1878) confirmed by the proviso to section 7 of the act of March 3, 1891?

Opinion.

Filed November 30, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50796.

THE UNITED STATES OF AMERICA on the Relation of WILLIAM GRIBBLE and MENASHA WOODEN WARE COMPANY, Petitioners,
vs.

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

This is a petition for a writ of Mandamus to be issued to the Secretary of the Interior commanding him to withdraw an order of suspension and issue a patent to one of the petitioners. The land to which the proceeding relates is 160 acres of the public domain

19 claimed to have been entered under the timber and stone act, 20 Stat. 89, of June 3, 1878. The petitioner Gribble is the entryman and the petitioner corporation is his assignee. Gribble made the necessary cash payment and received his final receipt June 10, 1901. Thereafter he assigned to said corporation.

The ground of the petitioner's position is that no contest or protest was pending against his claim at the expiration of two years from said June 10, 1901, that is, on June 10, 1903; that if there was no pending contest or protest he was entitled to a patent and the respondent was bound to issue it as directed by section 7 of the act of March 3, 1891 (26 Stat. 1095). That section reads as follows:

"That after the lapse of two years from the date of the issuance of the Receiver's receipt upon a final entry of any tract of land under the homestead, timber-culture, desert-land, or pre-emption laws, or under this act, and when there shall be no pending contest or protest against the validity of such entry, the entryman shall be entitled to a patent conveying the land by him entered, and the same shall be issued to him."

If on June 10, 1903 there was a contest or protest pending the petitioners are plainly not entitled to the writ.

The situation on that date was this. The Commissioner of the Land Office had ordered an investigation of this claim among others and had instructed a special agent to carry it on. No formal or specific charges were made and the investigation was ordered by reason of the fact that in several of the claims the same witnesses had been used. To the commissioner this appeared suspicious of fraud and to call for an inquiry into the facts. The commissioner had also instructed the special agent charged with the investigation to cross-examine the claimant and his witnesses and make a prompt report thereon. It thus appears that the department was actively engaged in the investigation of the facts concerning the validity of the claim under a declaration of doubt and suspicion touching its good faith.

20 The question then is whether this constituted a contest or a protest. It was not a *contest* in the sense that a specific charge had been made, much less that notice thereof had been given to the claimant, so that it might be met by him. Neither was it a *protest* in the sense that a specific ground had been pointed out for the basis of the protest and the claimant informed thereof. But are either of these necessary? There was a solemn declaration by the department that the circumstances surrounding the claim were such as to beget suspicion and to call for a thorough investigation and that in the meantime the patent ought not — be granted. The very purpose of the investigation might be defeated if the claimant must be notified in advance. The investigation resulted, after June 10, 1903, in a report upon which there was a formal suspension of the patent and the case is still under consideration and undetermined for want of knowledge on the part of the department of the whereabouts of the claimant who should be served with notice.

As defined by Webster, a protest is "a solemn declaration of opinion, commonly a formal declaration against some act." Is not that

21 exactly what this was? It was the first step in a proceeding calculated to test the validity of the claimant's right to a patent. That step having been taken within the two years the statute of confirmation did not operate upon this claim.

Consequently the petitioners' demurrer to the respondent's answer must be overruled and the answer adjudged sufficient. It is so ordered.

WENDELL P. STAFFORD, *Justice.*

Supreme Court of the District of Columbia.

MONDAY, November 30, 1908.

Session resumed pursuant to adjournment, Mr. Justice Stafford presiding.

* * * * *

At Law. No. 50796.

THE UNITED STATES OF AMERICA on the Relation of WILLIAM GRIBBLE and MENASHA WOODEN WARE COMPANY, Petitioners,
vs.

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

Upon consideration of the petitioners' demurrer to the respondent's answer to the rule to show cause herein, it is ordered
22 that said demurrer be, and it is hereby overruled.

Supreme Court of the District of Columbia.

THURSDAY, December 10, 1908.

Session resumed pursuant to adjournment, Mr. Justice Stafford presiding.

At Law. No. 50796.

THE UNITED STATES OF AMERICA on the Relation of WILLIAM GRIBBLE and MENASHA WOODEN WARE COMPANY, Petitioners,
vs.

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

It appearing to the Court that the Petitioners' demurrer to the Respondent's answer to the rule to show cause was overruled on the 30th day of November, 1908, it is upon motion of the Petitioners, by their Attorney Mr. John M. Rankin, who now in open Court say they will stand upon said demurrer, ordered that judgment thereon be entered.

Therefore it is considered that the rule to show cause herein be, and the same is hereby discharged, the petition dismissed, and that the Respondent recover against said Petitioners the costs of his defense, to be taxed by the Clerk, and have execution thereof.

23 The Petitioners in open Court, by their Attorney, note an appeal to the Court of Appeals of the District of Columbia from the judgment of this Court in this cause, and, upon motion, the penalty of the bond for costs on said appeal is hereby fixed in the sum of one hundred dollars (\$100), or, in lieu thereof a deposit of one hundred dollars (\$100).

Memorandum.

December 10, 1908.—\$100 deposited in lieu of appeal bond.

24 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 23, both inclusive, to be a true and correct transcript of the record, according to Rule Five (5) of the Court of Appeals of the District of Columbia, in cause No. 50796 at Law, wherein The United States of America, on the relation of William Gribble and Menasha Wooden Ware Company are Petitioners, and James Rudolph Garfield, Secretary of the Interior, is Respondent, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 15th day of January, A. D. 1909.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1981. The United States of America on the relation of William Gribble and Menasha Wooden Ware Company, appellants, *vs.* James Rudolph Garfield, Secretary of the Interior. Court of Appeals, District of Columbia. Filed Jan. 18, 1909. Henry W. Hodges, clerk.